THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/S) No. 1507 of 2006

Ghasi Ram S/O Sri Govinda R/O Village Chakarpur, Tehsil Bazpur, Dehradun, District Dehradun.

… **Petitioner.**

Vs.

1. Commissioner, Kumaun Mandal, Nainital.
2. Deep Chandra S/O Govinda,
3. Yadram S/O Govinda, Residents of Village Chakarpur, Tehsil Bazpur, District Udham Singh Nagar.
4. Gram Sabha Chakarpur, Tehsil Bazpur, District Udham Singh Nagar through its Pradhan.

… **Respondents.**

Sri Rajeev Sharma, earned counsel for the petitioner.
Sri Nand Prasad, learned Standing Counsel for the respondent no.1.

Dated September 28, 2006.

Hon'ble B.S. Verma, J.

Heard learned counsel for the parties and perused the record.

By means of this writ petition, the petitioner has sought a writ, order or direction in the nature of certiorari quashing the order dated 27-10-2005 passed by the Up Zila Adhikari/Assistant Collector 1st Class, Bazpur, District Udham Singh Nagar and the order dated 23-8-2006 passed by the Commissioner, Kumaun Mandal, Nainital, in Civil Revision No. 20 of 2005-06, Ghasi Ram Vs. Deep Chandra and others. By the order dated 27-10-2005, the learned Assistant Collector has dismissed the application under Section 229 D of the Zamindari Abolition and Land Reforms Act ***(for short ZA & LR Act)*** and the application dated 21-10-2005 for opportunity to cross-examine the defendant no.2 by defendant no.1. Defendant Ghasi Ram filed the revision before the Commissioner, which too was dismissed by the impugned order dated 23-8-2006.

The respondent Yad Ram, who is brother of the petitioner Ghasi Ram and respondent no. 1 filed a partition suit under Section 176 of the Z.A. & L.R. Act against his brothers petitioner Ghasi Ram as well as Deep Chandra for the partition of the land in question. During the pendency of the suit, an application under Section 229 D of the said Act was moved by the petitioner-defendant, which was dismissed on the ground that the land in question is joint land and there is no dispute regarding the shares of all the brothers therein.

The petitioner and defendant Deep Chandra have admitted their 1/3rd share in their written statement. The learned Assistant Collector vide his order dated 27-10-2005 dismissed the application of the petitioner. Aggrieved by the impugned order passed by the Assistant Collector, the petitioner-defendant preferred revision before the Commissioner, Kumaun Region, Nainital, which, too, was dismissed holding that the parties to the partition suit, namely, the plaintiff as well as defendant nos. 1 and 2 have admitted their 1/3rd share in the land in their written statement.

The application under Section 229 D of the said Act can only be moved where the suit for declaration of right and title under Section 229-B of the Z.A. & L.R.Act is pending. The suit before the Assistant Collector is admittedly a suit for partition of land. The application moved by the petitioner before the trial court was misconceived. The learned Assistant Collector and the Revisional Court have rightly dismissed the application of the petitioner.

In the facts and circumstances, the writ petition is devoid of merit and is liable to be dismissed at the admission stage.

The writ petition is dismissed in-limine.

(B.S. Verma, J.)

RCP